



**A.S Kuloba & Wangila Advocates v Brooklyn Cleaning Services  
Limited (Judicial Review Miscellaneous Application E049 of 2025)  
[2025] KEHC 15594 (KLR) (Judicial Review) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15594 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E049 OF 2025  
RE ABURILI, J  
NOVEMBER 3, 2025**

**BETWEEN**

**A.S KULOBA & WANGILA ADVOCATES ..... ADVOCATE**

**AND**

**BROOKLYN CLEANING SERVICES LIMITED ..... CLIENT**

**RULING**

1. The advocate/applicant filed an Advocate-Client Bill of Costs for taxation dated 5<sup>th</sup> May 2025, and a ruling on the same was delivered on 17<sup>th</sup> July 2025 by Hon. E.C. Chelule, Deputy Registrar/ Taxing Master.
2. Aggrieved by the Taxing Master's ruling, the client/respondent filed a chamber summons application/ Reference dated 30<sup>th</sup> July 2025 on the same date, pursuant to Paragraph 11 of the Advocates Remuneration Order. It is this Reference/ application that is the subject of this ruling. The application seeks for the setting aside of the taxation decision and for the bill of costs to be taxed afresh by this court.
3. The chamber summons application is supported by the affidavit of Abdikadir Dahir sworn on 30<sup>th</sup> July 2025.
4. The client/respondent's case is that in reaching her decision, the Taxing Master ignored the oral agreement between the advocate and client where the parties had agreed on a legal fee of Kshs.50,000/= notwithstanding that the advocate did not controvert the existence of the oral agreement.
5. It is also the client/respondent's case that the Taxing Master failed to take into consideration payment of Kshs.25,000/= made to the advocate which it is claimed, was also not controverted by the advocate.



6. The client/respondent also alleges that the Taxing Master erred by taxing the bill under Schedule 6(j)(ii) of the Advocates Remuneration (Amendment) Order instead of under Schedule 6(j)(i). Further, that she taxed the instructions fees at Kshs.100,000/= instead of Kshs.45,000/= as provided for under Schedule 6(j)(i) of the Advocates Remuneration Order.
7. The taxing of items 3,6, and 9 is also challenged on grounds that the pleadings were served electronically.
8. The respondent/client filed written submissions dated 30<sup>th</sup> September 2025 to canvass the Reference. In the submissions, it is submitted that courts have held that non-compliance with Rule 11(1) is not fatal where the taxing officer has delivered reasons in his/her ruling on the bill of costs.
9. It is submitted that in the ruling dated 17<sup>th</sup> July 2025, the Taxing Master provided reasons for the taxed items in the bill and therefore there was no need to seek for further reasons. According to the client/respondent, the insufficiency of reasons does not preclude an aggrieved party from filing a competent reference. To support this position, the client/respondent relies on the case of Evans Thiga Gaturu vs. Kenya Commercial Bank Ltd [2012] KEHC 4274 (KLR).
10. It is submitted that submissions were made by the client/respondent and issues were raised in regard to the fact that there was an oral agreement, that partial payments had been made and specific items in the bill under the applicable schedule of the Advocates Remuneration Order were also disputed. The client/respondent submits that in particular, it opposed the bill of costs and cited the relevant fees for instruction fees (item 1), drawing pleadings (items 2, 5, and 8), making copies (items 3, 6, 9, and 16), attending the court registry (items 4 and 7), physical service (item 11) and perusal (items 12, 14, 19, 20, and 21), as detailed in Annexure BSCL 1 at pages 11–13.
11. It is submitted that the advocate/applicant did not respond to these submissions, and also that the Taxing Officer’s ruling neither demonstrates consideration of those submissions nor offers any explanation for their apparent rejection, thereby breaching the client’s right to a fair hearing under Article 50(1) of *the Constitution*.
12. It is also submitted that even in the absence of a binding fee agreement, partial payments made are relevant, and they should be credited against the outstanding taxed bill.
13. According to the client/respondent Schedule 6(j)(ii) of the Advocates Remuneration Orders is reserved for more complex and opposed applications requiring more time and skill. It submits that Schedule 6(j)(i) is what governs standard application under judicial review seeking prerogative orders, and reliance is placed in the case of Republic vs. Egerton University Ex parte Patel Maulik Prasun [2020] KEHC 8777 (KLR) to support this position.
14. The client/respondent submits that under Schedule 6(j)(ii) of the Advocates Remuneration Order, a Taxing Officer must first assess the complexity, length of documents, labour involved, and extent of opposition before applying the higher scale, otherwise, the basic fee under Schedule 6(j)(i) should apply. It is also submitted that although the Taxing Officer found that the judicial review matter handled by the Advocate was neither complex nor novel and was concluded within two months, she nonetheless applied Schedule 6(j)(ii) and awarded Kshs.100,000/-, which according to it is excessive and unjustified.
15. The client/respondent relies on the case of Keziah Gathoni Supeyo v Yano t/a Yano & Co. Advocates [2019] eKLR, where the court relied on the case of Premchand Raichand Ltd and Another v Quarry Services of East Africa Ltd and Others (1972) EA 162, where it is said that the court set out the



principles of fair reimbursement, reasonable costs to ensure access to justice, consistency in awards, and the need for the taxing officer to exercise discretion judiciously and not whimsically.

16. The client/respondent further submits that the Taxing Officer failed to justify departing from the minimum fee of Kshs.45,000/-. Also, in regards to costs awarded for items 3, 6, and 9, that the documents were filed and served electronically, not physically, and there was also no evidence to justify the five copies claimed, and only one copy per document was necessary.

## **Response**

17. In response the Advocate/Applicant filed a replying affidavit dated 15<sup>th</sup> September 2025.
18. According to the advocate/applicant, the application is prematurely brought before court by dint of rule 11(1) of the Advocates (Remuneration) Order, which requires that before a reference is filed, a notice of objection detailing items objected to precedes the application.
19. It is argued in contention that it is following the reasons by the taxing officer behind the taxation of the items objected to that an application such as the one filed by the client/respondent should follow pursuant to Rule 11(2).
20. The advocate/applicant contends that on the issue of the clients' claim that there was an agreement between the advocate and the client that the legal fees be Kshs 50,000/= which was not the case, the taxing officer in her decision of 17<sup>th</sup> July 2025, clearly gives her reasons behind her decision, and that she even cites Section 45 of the *Advocates Act*, which requires such agreements on fees if at all to be in writing. That, in the circumstances, the taxing officer was duly right in not taking into consideration the Kshs. 25,000/= alleged to have been part fees to a fee's agreement.
21. On the allegation that the taxing officer proceeded to assess the bill under Schedule 6(J)(ii) instead of Schedule 6(j)(i) of the Advocates Remuneration Order, it is contended that the law is very clear, noting that the bill emanates from a matter filed in the judicial review division seeking prerogative orders, the taxing officer was right to proceed to assess the same as indicated in her ruling that the applicable Schedule is 6(B) (a), and thus 6(1)(J) which provides for taxation of matters involving prerogative orders.
22. The advocate/applicant further contends that the discretion of what to award lies in the hands of the taxing officer having considered all the circumstances of the case, and that the Taxing Officer duly applied the discretion judiciously in taxing the instruction fees at what she deemed reasonable being the amount of Kshs 100,000/= which is the minimum sum under Rule 6(j)(II) of the Advocates Remuneration Order. Further, that it ought to be charged where the application is opposed, which that application was indeed opposed, and as such the taxing officer was right in awarding the advocate Kshs. 100,000/= in instructions fees.
23. On electronic service it is asserted that, the law has never been amended to address electronic service, and that electronic service is taken to be electronic service as provided for under the Advocates Remuneration Order, and that therefore the client/respondent's argument does not hold water.
24. The advocate/applicant contends that the bill if at all was supposed to have been raised by 50% percent being an advocate-client bill of costs as per schedule 6(B)(a) of the Advocates Remuneration Order, which, it is argued, that the court might have inadvertently overlooked, and that should in any case be factored on top of the assessed bill to add Kshs 68,301.50 being 50% of the total assessed bill of Kshs.136,603 to give a total sum of Kshs 204,904.50 as the assessed bill.



25. The advocate/applicant therefore contends that the client/respondent is in the circumstances lucky that the bill was assessed in the sum of Kshs 136,603/=, Kshs 260,399/= having been taxed off.
26. The advocate/applicant also filed written submissions dated 7<sup>th</sup> October 2025.
27. In the submissions the case of Non-Governmental Organizations Coordination Board vs. Eric Gitari & 5 others Petition (Application) No. 16 of 2019 is relied on where according to the advocate/applicant the same was in regard to a reference seeking to set aside and review the decision of Hon. B Kasavuli, Deputy Registrar of the Supreme Court, the Lord Justice of the Supreme Court, Justice Ouko, citing the case of Outa vs. Odoyo & 3 others, SC Petition No. 6 of 2014 is said to have highlighted the principles to be considered in an application for setting aside a certificate of taxation which is akin to a reference to include in cases where there is an error of principle committed by the taxing officer, the fees awarded is manifestly excessive and high so as it confines access to justice, the court is satisfied that the successful litigant is entitled to a fair reimbursement for the costs he has incurred, and the award proposed is far as practicable, consistent with the previous awards in similar cases.
28. The Court in Outa vs. Odoyo & 3 others, SC Petition No. 6 of 2014 is also said to have held that there is no fixed mathematical formula for a taxing officer to use in determining the appropriate amount of costs, as each case must be assessed on its own unique circumstances. Also, that the taxing officer exercises wide judicial discretion in matters of taxation, but that discretion must be applied judiciously and not arbitrarily. The court is said to have also observed that the single judge will ordinarily not interfere with the taxing officer's decision merely because they might have arrived at a different figure in similar circumstances.
29. It is also submitted that the Taxing Officer rightly indicated that the Mpesa payment of Kshs 25,000/= could as well have been money sent for anything, and it was not clear what the sums were for neither. The advocate/applicant submits that the funds were not sent to the Advocate firm, but to an individual.
30. According to the advocate/applicant the record shows that under Schedule 6(j)(ii) of the Advocate Remuneration Order, since the matter was opposed and met the required criteria, the Taxing Officer had discretion to assess instruction fees above Kshs 100,000/=.
31. That exercising this discretion, the Officer reduced the claimed Kshs 300,000/= to Kshs 136,603/=, taxing off Kshs 163,397/=. The ruling is said to have explained that the prayers were of a prerogative nature under Schedule 6(j)(ii), and as such that the Taxing Officer properly reduced the amount. It is submitted that her discretion should not be interfered with unless based on an error of principle, though she omitted to include get-up fees payable under Schedule 6(2).

### **Analysis and Determination**

32. I have considered the application, the affidavits, and the parties' submissions. The main issues that arise are:
  - a. Whether the application is competently before this Court in light of the procedure under Paragraph 11 of the Advocates Remuneration Order;
  - b. Whether the client/respondent has made out a case for the grant of the orders sought.
33. Before determining the merits, I will first address the procedural objection raised by the advocate/applicant, who has argued that the present reference is incompetent for failure to comply with Paragraph 11(2) of the Advocates Remuneration Order. To which the client/respondent has



responded that courts have held that non-compliance with Paragraph 11(2) is not fatal where the taxing officer has given the reasons in his/her ruling on the bill of costs.

34. It is correct that the procedure for filing references requires an aggrieved party to file a notice to the taxing officer within 14 days, specifying the items objected to, and subsequently the taxing officer shall forthwith record and forward to the objector the reasons for the decision on those items.
35. I have however considered the ruling delivered on 17<sup>th</sup> July 2025 and find that it contains detailed reasons for the decision. In such circumstances, courts have consistently held that failure to request for reasons is not fatal.
36. In *N.W. Amolo t/a Amolo Kibanya & Co. Advocates v Samson Keengu Nyamweya* [2016] KEHC 3518 (KLR) it was held thus:

“18. To answer the above issue on the competence of the Reference, which issue I shall consider it as preliminary objection, which, if found to be in the affirmative will dispose of the entire reference, I must set out the procedure for challenging taxation undertaken by the taxing officer.

“19. Paragraph 11 of the Advocates Remuneration Order provides that :

“11(1) should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge in chambers which shall be served on all the parties concerned, setting out the grounds of his objection.

Any person aggrieved by the decision of the judge upon any objection referred to such judge under sub- paragraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph(1) or subparagraph(2) of the taking of any step application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days’ notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.

“20. From the above provisions, it is clear to me that any party wishing to object to a taxation decision must give notice of objection in writing within 14 days after such decision. The notice must also specify the items of taxation which are objected to. Upon receipt of such notice of objection, the taxing officer is expected to record and forward to the objector the reasons for his decision on those items. The objector is then expected to, within 14 days from the date of receipt of the reasons file a reference by chamber summons and serve all the parties.

“21. In situations where the reasons for the decision are contained in the taxing officer’s ruling, it would not be necessary for the party objecting to issue a notice to the taxing officer. Seeking for reasons. The above position finds



support in Ahmednassir Abdikadir & Company Advocates V National Bank of Kenya Ltd (2) [2006] 1EA 5 where the court held that:

“Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reason simply because of the unfortunate wording of Subrule (2) of Rule 11 of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.(emphasis added).

37. The above position was also accepted by G.V. Odunga J (as he then was) in Evans Thiga Gaturu Advocate V Kenya Commercial Bank Ltd [2012] e KLR where the learned judge stated that:

“However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessary a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference.”

38. Consequently, I find that the client/respondents application dated 30<sup>th</sup> July 2025 is competently before this court for consideration on its merit.

39. The next issue raised by the client/respondent is that there existed an oral agreement made between the client and advocate wherein it was agreed that the total legal fees payable was Kshs.50,000/=. The client/respondent’s case is that it paid to the advocate/applicant a consideration of Kshs.25,000/=:,and that even though there was no written agreement, this amount ought to be off set from the amount owing.

40. In response, the advocate/applicant denies that there was any agreement between advocate and client on the instruction fees payable. The advocate/applicant agrees with the Taxing Master’s finding that advocate-client agreements need be in writing as is required under Section 45 of the *Advocates Act*. The advocate/ applicant also states that in any case, the said amount was paid to an individual and not the firm of advocates to which instruction fees ought to have been paid to.

41. Section 45(1) of the *Advocates Act* provides:

“1)Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—

- (a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate’s remuneration in respect thereof;
- (b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate’s instruction fee in respect thereof or his fees for appearing in court or both;
- (c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate’s fee for the conduct thereof, and such agreement shall be valid and binding on the parties



provided it is in writing and signed by the client or his agent duly authorized in that behalf.”[emphasis added]

42. The fact of whether or not an advocate-client relationship exists between the two parties in this suit is not in contention. The Court of Appeal in *Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited* [2017] eKLR emphasized:

“The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the Advocates Remuneration Order. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in *Taparn vs Roitei* [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The *Advocates Act* and the Advocates Remuneration Order confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered.

“The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.”

43. In *Omulele & Tollo Advocates v Mount Holdings Ltd* C.A.75 of 2015 it was held that:

“A retainer means the instruction, employment or engagement of an advocate by his client. On the other hand, a retainer agreement is merely a contract in writing prescribing the terms of engagement of an advocate by his client, including fees payable. Therefore, it is submitted while a retainer denotes a relationship between parties, the retainer agreement is merely the physical written document or manifestation of such a relationship.....As the Section [45 of *Advocates Act*] indicates, under such agreement, the parties fix or put a cap on the advocates’ instruction fees....both parties are beholden to the amount so fixed. From the foregoing it should thus be clear that the presence of a retainer is what in turn gives rise to the retainer Agreement.....It follows that for the retainer agreement to be valid and binding, the same must have been put in writing and signed by client and /or his agent.”

44. The client/respondent has challenged the Taxing Master’s finding that there was no agreement between advocate and client as the same ought to be in writing. She relied on Section 45(1) of the *Advocates Act* and, she also considered the evidence adduced before her by the client/respondent which is an Mpesa message of Kshs.25,000/= sent to Albert Kuloba.

45. The Taxing Mater relied on the case of *Nzaku & Nzaku Advocates v Tabitha Waithera Mararo* [2020] eKLR, where the court is said to have held that an agreement for fees contemplated under Section 45 is contract whose terms and conditions must be clear and unambiguous. It further held that there must be consensus or meeting of the minds between the parties and it must also be entered into freely without undue influence or promise.

46. In her finding, the Taxing Master observed that there was no indication as to the purpose of the funds being sent. Further, that there was also no written agreement as expressly stated under Section 45 of the *Advocates Act*. She also observed that it was difficult for the court to infer that the payment of



- Kshs.25,000/= made by the client/respondent was towards payment for fees for the particular case. The Taxing Master went ahead to find that there was no valid agreement between the parties hereto.
47. In light of the above clear statutory provisions, this court is satisfied that the Taxing Officer did not err in finding that there was no agreement between the client and advocate.
  48. The client/respondent further contends that the Taxing Master erred in principle by applying Schedule 6(j)(ii) of the Advocates (Remuneration) (Amendment) Order, rather than Schedule 6(j)(i), thereby assessing instruction fees at Kshs. 100,000/= instead of Kshs. 45,000/= as prescribed under Schedule 6(j)(i) of the Advocates Remuneration Order.
  49. In response, the advocate/applicant argues that the law is very clear and that the bill emanates from a matter filed in the judicial review division seeking prerogative orders. It is also argued that that the discretion of what to award lies in the hands of the Taxing Officer who having considered all the circumstances of the case, duly applied the discretion judiciously in taxing the instruction fees at what she deemed reasonable being the amount of Kshs 100,000/= which is the minimum sum under Schedule 6(j)(II) of the Advocates Remuneration Order.
  50. Further, that this minimum ought to be charged where the application is opposed, and in the instant case, the application was indeed opposed, and as such, the taxing officer was right in awarding the advocate Kshs. 100,000/= in instructions fees.
  51. On this issue, the Taxing Master in her ruling states that the applicable Schedule was 6(B) of the Advocates Remuneration Order as the matter was a judicial review application seeking prerogative orders. She observed that Schedule 6(1)(j) would apply in the circumstances. It was also her observation that she had the discretion to increase the figure provided but that the discretion ought to be exercised judiciously, and also subject to the principle of reasonableness.
  52. She stated that she was guided by the case of Premchand Raichand Limited & Another vs. Quarry Services of EA Ltd & Others [1972] EA PG 162 and Republic vs. Minister for Agriculture & 2 Others Ex parte Samuel Muchiri W' Njuguna & 6 Others [2006] eKLR where the courts stated that the complex element in the proceedings which guide the exercise of the taxing officer's discretion must be specified cogently and with conviction.
  53. The Taxing Master also relied on the case of Joreth Limited vs. Kigano & Another [2002] E.A. 92 where the court is set out various factors that are to be considered in determining the instruction fees.
  54. In her ruling, the Taxing Master held that she did not find anything novel or complex that arose in the matter, and that she had also considered the time taken to dispose the matter. She found that taking into account the time taken in this matter, the interest of the parties, the importance of the matter, the volume of the pleadings, scope of the work done and the nature of the dispute Kshs.200,000/= ought to have been taxed off.
  55. The client/respondent having challenged the Taxing Masters' ruling on grounds that she ought to have taxed the advocate-client bill of costs under Schedule 6(j)(i) and not Schedule 6(j)(ii) of the Advocates (Remuneration) (Amendment) Order, it is important for emphasis to reproduce both provisions herein under.
  56. Schedule 6(j)(i) and 6(j)(ii) Advocates (Remuneration) (Amendment) Order

“(j) Constitutional petitions and prerogative orders:

To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking



into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate—

- i. where the matter is not complex or opposed such sum as may be reasonable but not less than 45,000
- ii. where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than 100,000”

57. From the record on the Case Tracking System and as has been stated by the advocate/applicant, the application seeking prerogative orders was opposed by the firm of Kamotho Njomo & Company Advocates on behalf of the 2<sup>nd</sup> respondent, and the firm of Njoroge Regeru & Company Advocates on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
58. It is however clear that the applicable Schedule under the Advocates (Remuneration) Order is not determined solely by whether or not the matter was opposed. Schedule 6(j) expressly requires the Taxing Officer to consider additional factors, including the nature and importance of the application, its complexity, the novelty or difficulty of the questions raised, the value of the subject matter, and the time expended by counsel.
61. In the present case, the Taxing Officer expressly found that the matter was neither novel nor complex. Accordingly, even though the application was opposed, the assessment of instruction fees had to take into account these broader considerations under Schedule 6(j), rather than be based solely on the fact of opposition.
62. The Taxing Master taking into consideration all factors went ahead to tax the sum of Kshs.200,000 from the Kshs.300,000 that was sought by the advocate/applicant.
63. This court therefore declines to interfere with the Taxing Master’s finding on this issue.
64. The next issue raised by the client/respondent is that the Taxing Master erred in allowing items 3,6, and 9 of the bill of costs yet the pleadings were filed, and served electronically. Also, that there was no evidence to justify the five copies claimed, and only one copy per document was necessary.
65. While as correctly put, the Taxing Master did not give reasons as to why she allowed Items 3,6, and 9, this court finds it difficult to allow the client/ respondent’s argument that service was only done electronically.
66. In an effort to verify whether or not physical service was effected, this Court viewed the record in JR E161 of 2024-Brooklyn Cleaning Services Limited vs. PPARB & 3 Others which was subject of the bill of costs lodged by the advocate/applicant which was the subject of the ruling dated 17<sup>th</sup> July 2025 which is the subject of the instant reference. On the Case Tracking System, it is established that therein, the advocate/ applicant had filed an affidavit of service sworn by Aggrey Wafula on 5<sup>th</sup> August 2024.
67. In the affidavit at paragraph 2-4 Mr. Wafula the deposes as follows:

“2. That on 26<sup>th</sup> July 2024 at the law firm of Messrs. A. S. Kuloba & Wangila Advocates, Mr. Kuloba A.S. counsel having personal conduct of this matter instructed me to electronically serve the Respondents and/or their respective advocates with the following documents;an ex-parte chamber summons



application dated 24<sup>th</sup> July 2024 filed in this matter under certificate of urgency, the statement of facts dated 24<sup>th</sup> July 2024, the verifying affidavit to the statement of facts dated 24<sup>th</sup> July 2024, the notice of motion dated 26<sup>th</sup> July 2024 together with its supporting affidavit and annexures, and; the ruling and directions by the court of dated 25<sup>th</sup> July 2024, Judgement notice dated 26<sup>th</sup> July 2024

3. That from the email address of Messrs. A.S Kuloba and Wangila Advocates i.e. kulobawangila@gmail.com, I served the respondents with the above listed documents as follows: -
  - a) to the 2<sup>nd</sup> Respondent I served them through the email address of their advocates info@knaadvocates.com and their shiners@gmail.com
  - b) to the 3<sup>rd</sup> and 4<sup>th</sup> respondents I served them through their email address customercare@kuttrh.go.ke
4. That I did not have the 1<sup>st</sup> respondent's email address at the time I was effecting electronic service and on 29<sup>th</sup> July 2024 having been instructed by Mr. Kuloba A.S. to effect physical service of the documents in 2 above on all respondents I proceeded to do so.”

59. The succeeding paragraphs of Mr. Wafula's affidavit continue to detail how the physical service was effected upon the respondents. This affidavit has not been controverted by the client/respondent and as such, the assertion that there was no need for the advocate/applicant to make 5 copies or that service was only done electronically is not correct.
60. I therefore decline to interfere with the Taxing Masters' finding in regard to Items 3,6 and 9 of the Bill of costs.
61. The next two issues raised in the advocate/applicant's replying affidavit are first, that although the Taxing Master ought to have raised the bill by 50% percent being an advocate-client bill of costs as per schedule 6 (B) (a) of the Advocates Remuneration Order, she might have inadvertently overlooked the same, and that should in any case be factored on top of the assessed bill to add Kshs.68,301.50 being 50% of the total assessed bill of Kshs.136,603 to give a total sum of Kshs.204,904.50 as the assessed bill.
62. Secondly, the advocate/applicant has also in its submissions urged that the Taxing Master may have overlooked awarding getting up fees yet the bill was an advocate-client bill of costs.
63. I note that the issue of getting up fees was raised for the first time in the advocate's submissions, and was neither pleaded in the bill of costs nor canvassed before, or determined by, the Taxing Master. The effect of this is that the issue was not properly before the Taxing Master for consideration, and cannot therefore be raised for the first time in a reference, as doing so would amount to introducing a new claim outside the pleadings and deny the other party an opportunity to respond. More often than not, although getting up fees for trial is a percentage of the instruction's fees, it is usually a figure that must be justified with the advocate demonstrating that they are entitled to that fee. It is never an automatic fee given on a silver platter by the taxing master.
64. This court however, notes from the ruling that the Taxing Master erroneously refers to the bill of costs interchangeably as a party and party bill of costs and also as an advocate-client bill of costs.



65. The court in the case of *BM Mung'ata & Company Advocates vs. Makiti* [2024] KEELC 1109 (KLR) held as follows;

“Fees for getting up for trial are provided for under Schedule 6 (2) of the Advocates (Remuneration) Order 2014 which states that;

“In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation: Provided that—

- i. this fee may be increased as the taxation officer considers reasonable but it does not include any work comprised in the instruction fee;
- ii. no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 15% of the instruction fee allowed on taxation may, if the judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;
- iii. in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.”

66. It is a settled principle that parties are bound by their pleadings, and a court or taxing officer can only determine and award what has been specifically pleaded and claimed. A bill of costs, being a form of pleading, defines the scope of the advocate’s claim and guides the taxation process. Where an item such as getting-up fees or increasing the taxed advocate-client bill by 50% is not included in the bill, there is no basis upon which these items can be considered or awarded by the taxing master and unless there is a reference or cross reference filed, this court cannot reverse the decision or lack thereof by the taxing master, on its own motion.

67. Allowing the stated items at a later stage would amount to granting reliefs that were never sought, thereby denying the opposing party an opportunity to respond or to challenge the basis of the claims. Such an approach would offend the fundamental rule that parties are confined to their pleadings and that taxation must be conducted strictly within the parameters of what was properly before the Taxing Officer.

68. Moreover, every item in a bill of costs must be justified by showing that it was properly incurred and duly earned. Just as instruction fees must be supported by evidence of work done and the complexity or importance of the matter, getting-up fees must equally be shown to have been earned, typically by demonstrating preparation for hearing after the matter was set down.

69. Where such an item has not been pleaded or justified, there exists neither a factual nor legal foundation for its award. In any event, the advocate had the opportunity to amend the bill of costs to include getting-up fees and the increase by 50% at any time before the Taxing Master delivered her ruling, with the leave of the court.

70. Having failed to do so, the omission cannot now be remedied on reference filed by the opposite party, in the absence of a reference or cross reference filed by the advocate.

71. Accordingly, had the Taxing Officer proceeded to grant getting-up fees that was never claimed, she would have fallen into error by awarding an unpleaded and unproven item contrary to established



principles of taxation and procedural fairness. Neither can this court award through submissions, an increase by 50%.

72. The Supreme Court in the case of *Odinga & another v Independent Electoral and Boundaries Commission & 2 others* [2017] KESC 31 (KLR) observed as follows;

“ 51. In the case of *Arikala Narasa Reddy v Venkata Ram Reddy Reddygari & anr*, Civil Appeal Nos 5710-5711 of 2012; [2014] 2 SCR the Supreme Court of India held that [paragraph 8]:

“Before the court permits the recounting, the following conditions must be satisfied:

- i. The court must be satisfied that a prima facie case is established;
- ii. The material facts and full particulars have been pleaded stating the irregularities in counting of votes;
- iii. A roving and fishing inquiry should not be directed by way of an order to re-count the votes;
- iv. An opportunity should be given to file objection; and
- v. Secrecy of the ballot should be guarded.

52. Further, the court went on and observed that:

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings. The court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for dealing the election to be void. The order of recounting can be passed only if the petitioner sets out his case with precision supported by averments of material facts.”

53. Although the above case relates to the issue of recount of votes, we find the principles highlighted therein relevant in determining the basis under which a court can order scrutiny. Indeed, comparative jurisprudence from the already reviewed Kenyan cases, aligns with the said holding.”[emphasis added]

73. Similarly, the Court of Appeal in the case of *Independent Electoral and Boundaries Commission & another v Mule & 3 others* [2014] KECA 890 (KLR) while agreeing with the appellants that parties are bound by their pleadings and that the Judge in the High Court overstepped her mandate her mandate in crafting a new issue which was not pleaded by the parties the Judges of Appeal reiterated that the Court of Appeal reiterated the well settled principle that parties are bound by their pleadings, which define the scope of the issues for determination.



74. That a court has no jurisdiction to frame or determine matters not raised by the parties, as doing so amounts to descending into the arena of conflict and undermines the adversarial system of justice. It was also observed that the role of the judge is to act as an impartial arbiter and, to determine only the issues the parties have placed before the court.
75. The Court in the above cited case emphasized that it is contrary to the nature and function of the court to base its decision on claims or defences not pleaded, as this denies a party the right to be heard and constitutes a miscarriage of justice. It was held that where a trial court introduces new issues or determines a case on matters not properly before it, such conduct amounts to a reversible error.
76. Finally, this Court observes that the respondent did not file any cross-reference pursuant to Paragraph 11 of the Advocates (Remuneration) Order challenging the decision of the taxing officer. In the absence of such a cross-reference, this Court lacks the jurisdiction to make any orders that would have the effect of reversing, varying, or otherwise disturbing the taxation in favour of the respondent. The law is settled that a party aggrieved by the decision of a taxing officer must properly invoke the procedure laid down under Paragraph 11 of the Advocates Remuneration Order, by filing a reference, and where applicable, a cross-reference.
77. In view of all the above, I find and hold that the issue of getting up fees having not been pleaded by the advocate/applicant in pleadings filed before the Taxing Master cannot be raised at this stage. Additionally, this Court finds and holds that the Taxing Master did not err in principle by failing to apply the mandatory 50% uplift prescribed under paragraph (B) of Schedule 6 of the Advocates (Remuneration) Order, the taxation having been between advocate and client, as there is no challenge by way of reference filed by the advocate.
78. Consequently, the reference is found to be devoid of merit and is hereby dismissed. The ruling on taxation is hereby upheld.
79. Each party shall bear its own costs.
80. As the advocate has been paid the already taxed costs, this file is closed.
81. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF NOVEMBER 2025**

**R.E. ABURILI**

**JUDGE**

